IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9749 OF 2004

Balasaheb Bapuji Kale & anr. ... Petitioners
v/s.
Nashik Municipal Corporation
& ors. ... ... Respondents

Mr.R.D.Soni i/by M/s.Ram & Co. for petitioners.

Mr.R.V. More for res.Nos.1 & 2.

Mr.S.R. Nargolkar, AGP for res.Nos.3, 4, 6 & 7.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE : 6th June 2005

P.C. :

1. This petition makes a grievance that after the Municipal Corporation approved the building construction plans submitted by the petitioners in pursuance of the Government Scheme of 7th April 1994, now the Municipal Corporation is backing out and has stayed the plans which have been sanctioned. The stand of the Municipal Corporation is that the particular parcel of land no longer belongs to the petitioners and that the Scheme of the Government dated 7th April 1994 does not apply since the land belongs to the Municipal Corporation.

2. An affidavit dated 12th April 2005 has been filed on behalf of the Government by one Shri

S.V. Jadhav, Under Secretary in Urban Development Department, Mantralaya, Mumbai, which states that the particular Scheme can be extended to the concerned parcel of land. However, the fact remains that in paragraph 26 of the affidavit-in-reply dated 28th February 2005 filed by one Shri S.Y. Pawar, Executive Engineer, Nashik Municipal Corporation, he has stated that the impugned decision has only stayed the building permission. It is further stated that in the event the Municipal Corporation decides to revoke and cancel the building permission, the procedure established by law will be followed.

3. Mr.Soni, learned Counsel appearing for the petitioners, has pointed out that the concerned land initially belonged to the petitioners and it is only because of the Scheme under Section 20 of the Urban Land Ceiling Act, 1976 that the particular parcel of land was handed over to the Municipal Corporation. He has further pointed out that the Scheme was, in fact, beneficial to both the parties and there is no reason for the Municipal Corporation to change the stand that it has taken after the plans were sanctioned. In any case, in view of what is stated in paragraph 26 of the affidavit-in-reply dated 28th February 2005,

we expect the Municipal Corporation to follow the due process which will mean giving a notice and hearing under Section 51 of the Maharashtra Regional and Town Planning Act. That will, however, be in the event the Municipal Corporation decides to cancel the building permission. We also expect the Municipal Corporation to take a decision in any case within three months from today. In the event, any such decision is taken, we clarify that it will be for the petitioners to take appropriate steps thereafter. The petition stands disposed of.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)